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Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Price Cap Regulation of)
Local Exchange Carriers)CC Docket No. 93-179Rate of Return Sharing and)
Lower Formula Adjustment)**Reply Comments of the Bell Atlantic Telephone Companies**

The vast majority of comments¹ support the position of the Bell Atlantic telephone companies² ("Bell Atlantic") and call for rejection of the Commission's proposed rules.³ Only four comments⁴ support the Commission's proposal, in whole or in part.⁵ These comments would have the Commission ignore price cap principles and extend the vestiges of rate of return regulation.

¹ Comments opposing the NPRM include those by Ameritech Services Inc., Bell Atlantic, Bell South, GTE Service Corp., Pacific Bell, Rochester Telephone Corp., and U.S. West Communications, Inc. Southwestern Bell and the United States Telephone Association both argued that the NPRM is premature in light of the impending price cap review by the Commission.

² The Bell Atlantic telephone companies are the Bell Telephone Company of Pennsylvania, the four Chesapeake and Potomac Telephone companies, the Diamond State Telephone Company, and New Jersey Bell Telephone Company.

³ *Price Cap Regulations of Local Exchange Carriers Rate of Return Sharing and Lower Formula Adjustment*, Notice of Proposed Rulemaking, 8 FCC Rcd 4415 (1993) ("Add-back NPRM").

⁴ AT&T Comments; MCI Telecommunications Corp. Comments ("MCI Comments"); Comments of the NYNEX Telephone Companies ("NYNEX Comments"); Comments of the Southern New England Telephone Company ("SNET Comments").

⁵ SNET Comments do not address add-back of sharing. MCI seeks add-back of sharing, but not exclusion of lower formula adjustments (see discussion below).

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The comments supporting the NPRM rely on the perceived similarity of the proposed rules to excess earnings refunds under rate of return regulation.⁶ The price cap rules, however, were a departure from rate of return regulation. Sharing and lower formula adjustments are merely productivity backstops to the basic price cap formulae and were designed "to intrude as little as possible on the intended incentives and benefits of the price cap plan."⁷ In fact, sharing and lower formula adjustments were intended to be "substantially different" from rate of return regulation's automatic refund mechanism.⁸ A modification of the current rule of no add-back can hardly be justified by suggesting that the current rule differs from the rejected automatic refund.

NYNEX suggests that the NPRM only attempts to codify existing rules.⁹ NYNEX does not, and can not, offer any support in the

⁶ See, e.g., AT&T Comments at 4-5; MCI Comments at 1-2.

⁷ *Policy and Rules Concerning Rates for Dominant Carriers*, Order on Reconsideration, 6 FCC Rcd 2637, ¶ 88 (1991) ("Reconsideration Order").

⁸ *Policy and Rules for Dominant Carriers*, Supplemental Notice of Proposed Rulemaking, 5 FCC Rcd 2176, ¶ 172 (1990).

⁹ See NYNEX Comments at 11.

price cap rules for this view.¹⁰ The NPRM itself concedes that there is no explicit add-back requirement in the existing rules.¹¹ Even AT&T concedes that this rulemaking can have no impact on existing rates, including the 1992 rates currently subject to investigation.¹²

NYNEX and the NPRM itself also rely on unrealistic examples. Unlike the examples attached to Bell Atlantic's comments, NYNEX and the NPRM offer examples that assume earnings consistently above or below the backstop levels.¹³ As shown in Exhibit 1, the actual results of the price cap LECs show overall earnings within the backstop levels. Moreover, according to Form 492A data, as well as 1993 ARMIS data, previously low earning LECs such as NYNEX and SNET have been able to make productivity improvements to move well above the 10.25% adjustment level. Based on the actual performance of the price cap LECs, the Commission's real concern should be on limiting the effect of the back-stops to a single year.

¹⁰ NYNEX, like other supporters of add-back requirements, relies on superseded rate of return regulations. See NYNEX comments at 5. NYNEX suggests that failure to exclude lower formula adjustments would result in confiscatory rates, but NYNEX's arguments require the Commission to ignore a price cap LEC's own responsibility to improve its productivity. Moreover, in the event of sustained underearning, the price cap rules provide for the opportunity for a price cap LEC to improve its earnings by filing for rate increases above the price caps. See *Policy and Rules Concerning Rates for Dominant Carriers*, Second Report and Order, 5 FCC Rcd 6786, ¶ 304 (1990) ("Price Cap Order").

¹¹ Add-back NPRM at ¶ 4.

¹² AT&T comments at 5-6.

¹³ The examples also make the unrealistic assumption that competitive pressures will not drive prices below the caps.

In isolation, MCI supports the legitimacy of price cap incentives for low earning LECs, while seeking to impose added rate of return burdens for higher earning LECs. MCI would support no exclusion of lower formula adjustments, but would require add-back of sharing. The one-sided MCI proposal ignores the theoretical underpinnings of the backstops.

Contrary to MCI's argument, sharing is not a refund,¹⁴ but rather a one-time prospective productivity adjustment. MCI fails to acknowledge that add-back would allow this one-time adjustment to have a multi-year impact on indices and rates.¹⁵ An add-back of sharing requirement would permanently penalize a LEC for achieving the efficiencies and productivity gains intended by the Commission under this incentive regulation plan. Add-back effectively operates in the same manner as the automatic stabilizer rejected by the Commission when it adopted price caps.¹⁶

None of the comments suggests a real need to broaden the scope of existing rate of return limitations on the Commission's price cap scheme. These limitations constrain the customer benefits of investment in infrastructure, new services and innovation that the Commission sought to foster when it authorized the price cap plan.¹⁷ For the reasons set forth herein and in Bell Atlantic's

¹⁴ See *Policy and Rules for Dominant Carriers*, Supplemental Notice of Proposed Rulemaking, 5 FCC Rcd 2176, ¶ 172 (1990).

¹⁵ See Bell Atlantic Comments at 2-4.

¹⁶ See Price Cap Order at ¶ 9.

¹⁷ See Reconsideration Order at ¶ 178.

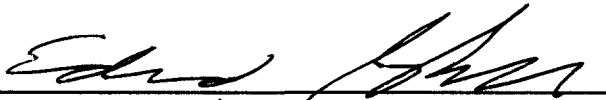
initial comments, the Commission should accept the majority of the comments and reject the proposed rulemaking.

Respectfully submitted,

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Dated: September 1, 1993

BELL ATLANTIC

EXHIBIT 1

1991-1992 PRICE CAP FORM 492A RATE OF RETURN RESULTS
(Thousands)

LN	PRICE CAP LEGS	1991 FORM 492A 1ST Report			1991 FORM 492A 2ND Report			1992 FORM 492A 1ST Report Note 2			
		Return (A)	ANI (B)	(C)=(A/B)*100	Return (D)	ANI (E)	(F)=(D/E)*100	Return (G)	ANI (H)	(I)=(G/H)*100	
1	AMERITECH	383,379	2,961,652	12.94%	381,424	2,934,595	13.00%	384,393	3,005,755	12.79%	
2	BELL ATLANTIC	513,683	3,990,408	12.87%	507,564	3,994,741	12.71%	503,654	4,034,959	12.48%	
3	BELLSOUTH	595,613	4,647,879	12.81%	587,163	4,651,707	12.62%	604,565	4,640,488	13.03%	
4	NEW ENGLAND TEL	124,292	1,547,342	8.03%	132,218	1,547,342	8.54%	--	--	--	
5	NEW YORK TEL	262,939	2,665,112	9.87%	262,806	2,676,126	9.82%	--	--	--	
6	NYNEX	387,231	4,212,454	9.19%	395,024	4,223,468	9.35%	485,533	3,947,104	12.30%	
7	PACIFIC BELL	282,852	2,384,123	11.86%	282,852	2,386,382	11.85%	308,703	2,390,467	12.91%	
8	NEVADA BELL	10,002	78,767	12.70%	10,160	78,289	12.98%	11,040	71,087	15.53%	
9	ROCHESTER	Note 3	9,397	159,024	11.82%	9,397	159,024	11.82%	19,899	164,305	12.11%
10	SNET	Note 3	22,699	512,245	8.86%	22,417	523,474	8.56%	64,460	507,830	12.69%
11	SOUTHWESTERN BELL	342,513	3,188,968	10.74%	342,754	3,187,837	10.75%	364,246	3,082,742	11.82%	
12	US WEST	438,393	3,642,399	12.04%	452,238	3,645,651	12.40%	450,180	3,620,579	12.43%	
14	UNITED (Cosa)										
15	UTNW	5,878	33,577	17.51%	5,878	34,039	17.27%	5,849	32,909	17.77%	
16	UTSE	10,781	78,301	13.77%	10,762	78,781	13.66%	10,640	78,417	13.57%	
17	UTIN	5,972	40,837	14.62%	5,855	41,634	14.06%	5,793	38,026	15.23%	
18	UTEG	10,876	93,575	11.62%	10,941	93,426	11.71%	11,543	93,660	12.32%	
19	UTMW	22,305	153,690	14.51%	22,557	154,847	14.57%	23,834	158,376	15.05%	
20	UTOH	11,647	88,592	13.15%	11,352	89,000	12.76%	12,548	88,854	14.12%	
21	UTFL	47,168	354,212	13.32%	46,541	358,017	13.00%	39,949	328,843	12.15%	
22	UTNC	20,260	174,244	11.63%	20,252	177,183	11.43%	18,283	185,004	9.88%	
23	Composite UNITED	134,887	1,017,028	13.26%	134,138	1,026,927	13.06%	128,439	1,004,089	12.79%	

Notes:

1. Source: Filed Form 492A reports.
2. Unadjusted for add back of sharing or lower formula adjustments. Pending FCC investigation of the calculation of 1992 interstate rate of return results and the Commission's add back NPRM.
3. Rochester and SNET rates of return shown in Columns C and F for the 1991 Form 492A represents July-December 1991 results annualized.

1991-1992 PRICE CAP FORM 492A RATE OF RETURN RESULTS
(Thousands)

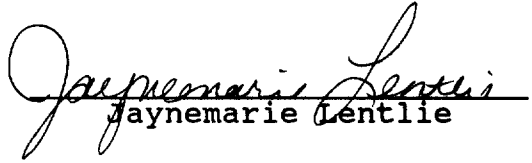
LN	PRICE CAP LECS	1991			1991			1992		
		Return	ANI	FORM 492A	Return	ANI	FORM 492A	Return	ANI	FORM 492A
		(A)	(B)	1ST Report	(D)	(E)	2ND Report	(G)	(H)	1ST Report
				(C)=(A/B)*100			(F)=(D/E)*100			Note 2
										(I)=(G/H)*100
24	GTE (Cosa)									
25	GTAK	592	4,031	14.69%	592	4,031	14.69%	606	4,083	14.84%
26	GTCA	97,344	814,202	11.96%	101,540	815,721	12.45%	90,690	829,960	10.93%
27	GTFL	67,867	579,453	11.71%	73,331	579,941	12.64%	55,212	550,598	10.03%
28	GTHI	26,114	235,245	11.10%	27,700	235,809	11.75%	22,163	239,727	9.25%
29	GTIL	15,438	135,227	11.42%	17,197	135,900	12.65%	17,305	142,130	12.18%
30	GTIN	23,437	172,255	13.61%	24,407	172,332	14.16%	23,359	168,160	13.89%
31	GTMI	16,674	134,572	12.39%	17,430	135,200	12.89%	20,686	142,812	14.48%
32	GTOH	14,124	149,605	9.44%	15,757	149,305	10.55%	20,241	150,967	13.41%
33	GTPA	10,889	94,170	11.56%	12,180	94,990	12.82%	12,229	98,270	12.44%
34	GTWI	10,147	101,384	10.01%	10,618	101,801	10.43%	12,921	102,953	12.55%
35	GTIM	2,749	30,583	8.99%	3,046	30,556	9.97%	4,627	29,934	15.46%
36	GTMO	3,596	27,968	12.86%	3,715	27,935	13.30%	3,777	27,226	13.87%
37	GTNE	878	10,614	8.27%	923	10,600	8.71%	1,722	12,650	13.61%
38	GTNA	5,829	57,082	10.21%	8,265	56,870	14.53%	10,235	58,984	17.35%
39	GTNB	33,060	299,086	11.05%	35,313	298,485	11.83%	33,171	298,028	11.13%
40	GTSO	46,416	425,030	10.92%	48,896	425,158	11.50%	52,934	416,902	12.70%
41	GTSW	47,295	475,342	9.95%	48,658	476,102	10.22%	52,299	472,399	11.07%
42	COCT	12,589	108,029	11.65%	13,023	109,722	11.87%	8,600	105,925	8.12%
43	CONY	6,359	68,010	9.35%	6,472	65,352	9.90%	5,649	69,499	8.13%
44	COPA	2,140	17,153	12.48%	2,219	17,356	12.79%	3,234	17,398	18.59%
45	COTX	5,394	56,581	9.53%	5,818	56,942	10.22%	6,302	57,609	10.94%
46	COCR	27,037	243,264	11.11%	27,684	246,752	11.22%	20,197	238,269	8.48%
47	CONW	2,712	30,185	8.98%	2,778	30,993	8.96%	3,041	30,028	10.13%
48	COWW	5,396	51,538	10.47%	4,590	43,667	10.51%	5,079	41,339	12.29%
49	COEN	4,759	43,797	10.87%	4,756	45,906	10.36%	3,480	40,739	8.54%
50	COES	18,648	215,373	8.66%	20,500	212,010	9.67%	18,162	210,383	8.63%
51	Composite GTE	507,483	4,579,779	11.08%	537,408	4,579,436	11.74%	507,921	4,556,972	11.15%
52	COMPOSITE LEC ROR (Note 4)	3,660,228	31,374,726	11.67%	3,694,353	31,391,531	11.77%	3,917,392	31,026,377	12.63%

Notes:

4. Composite Price Cap LEC ROR calculated based on the sum of data on Lines 1 + 2 + 3 + 6 + 7 + 8 + 9 + 10 + 11 + 12 + 13 + 23 + 51. Lines 9 and 10 for Rochester and SNET were annualized for 1991 ROR results.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing "Reply Comments of the Bell Atlantic Telephone Companies" was served this 1st day of September, 1993, by first class mail, postage prepaid, to the parties on the attached list.


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